



# Office of the County Executive

MONROE COUNTY, NEW YORK

**Cheryl Dinolfo**  
*County Executive*

June 13, 2017

Benoit Bouchard, Commissioner  
International Joint Commission  
Great Lakes Regional Office  
100 Ouellette Ave., 8th Floor  
Windsor, ON N9A 6T3

Dear Commissioner Bouchard,

I am writing to you on behalf of the shoreline residents and businesses of Monroe County. We have seen the continuing destruction of property, devastation of businesses and significant impact on municipal infrastructure caused by the unprecedented historic high levels of Lake Ontario. We seek resolution of the ongoing monitoring of the lake levels as well as compensation for the impacted property owners.

The International Joint Commission (IJC) was created under the 1909 treaty between the United States and Great Britain. Article IV of the treaty dictates that no "dams or other obstructions" to water flowing in the Ontario/St. Lawrence River basin would be constructed which would "raise the natural level of waters" on the upstream residents. An exception was given to construction approved by the IJC.

The treaty went on with further guidance to the IJC in article VIII. Here the treaty provides:

*"The Commission in its discretion may make its approval...conditional upon the construction of remedial or protective works to compensate so far as possible for the particular use or diversion proposed, and in any such case may require that suitable and adequate provision, approve by the Commission, be made for the protection and indemnity against injury of all interests..."*

*In Cases involving the elevation of the natural levels of waters... as a result of construction... of dams or other obstructions... the Commission share require, as a condition of its approval thereof, the at suitable and adequate provision... be made for the protection and indemnity of all interests... which may be injured thereby."*

The IJC, under the authority granted to it by the 1909 treaty, has regulated these waters as outlined in the various plans issued by the Commission since 1910. "Regulation Plan 2014 for the Lake Ontario and St. Lawrence River" is just the latest effort by the Commission.

Within Plan 2014, the Commission itself ordered and directed that:

*“interests... which are injured by the reason of the construction, maintenance and operation of the works shall be given suitable and adequate protection and indemnity...”*

This mirrors the Treaty’s stated guidelines. However, like the Treaty before it, the Plan does not allocate funds for the stated protection and indemnity, nor does either government. While the goals and directions appear to be worthy of praise, in fact, they are hollow words – neither the Plan nor the Treaty give any reprieve to those harmed by the attempts at water level management. The decisions made by the Commission harm one or more of the interests in the basin in order to benefit more favored interests. Those who are harmed are left without remedy of any kind. This is unconscionable.

This year, 2017, is the first year the IJC has operated under the dictates of Plan 2014. The results have been catastrophic for the riparian land owners along the south shore of Lake Ontario. We are of the opinion that the losses suffered by the riparian owners are directly attributed to the decisions made by the Commission with respect to the water levels seen in Lake Ontario in the Fall of 2016 into the Spring of 2017. The Commission was negligent in its decision to allow the lake to achieve near record levels during this period. The failure to act prudently during this time period simply did not allow enough room in the Ontario basin to accommodate the predictable inflow of waters from the other Great Lakes as well as the ample rain fall throughout the area.

We hereby request that the Commission immediately embrace the spirit of the Treaty of 1909 as well as the clearly stated orders and direction of its own Plan 2014. It is crystal clear that the stated goals of both were to assure that parties injured by the choices made by the Commission, under the authority of the Treaty, would be fully compensated. This goal is the foundation of the Plan. The IJC should embrace its own goal.

On behalf of the south shore residents of Lake Ontario, we request that the Commission establish a process which would provide compensation for damages suffered. I also request a meeting with the IJC to discuss future actions. Should the IJC choose not to meet and agreeably resolve this matter, we ask that the damage claims sustained by property owners be resolved by a Federal Court Judge who could hear evidence of the aggrieved injured parties and the position of the Commission and, thereafter, render a fair and just verdict. This could only be addressed by a federal lawsuit brought by those injured parties.

The Commission may argue that it is cloaked with immunity from Federal litigation. We are requesting that the Commission waive its claim of immunity to fulfill the clear intent of Plan 2014 and the Treaty of 1909. Such a waiver would not be an admission of negligence nor of any responsibility. Rather it is the only way that those who have been injured and the Commission are able to present their opposing views to a neutral party.

On the other hand, cloaking itself in immunity will send the message to the property owners who have been devastated by the high lake levels that the Commission's stated desire to assure parties injured by the actions of the Commission were placed in the Plan without any intent that compensation would ever be available. It would reinforce the view of many that there was never an intent to compensate those injured and would undermine the Commission.

Please advise whether the Commission will honor our request for a meeting and follow Plan 2014 by compensating aggrieved parties. Alternatively, we request that the Commission waive its claim of immunity in all matters involving the high water damage suffered by the riparian land owners and businesses. This office and the citizens of the counties of the south shore of Lake Ontario await the Commission's response.

Sincerely,



Cheryl Dinolfo  
Monroe County Executive

CD/kam

CC: Honorable Rex Tillerson, United States Secretary of State  
Honorable Kirsten Gillibrand, United States Senate  
Honorable Charles Schumer, United States Senate  
Honorable Louise Slaughter, United States House of Representatives  
Honorable Chris Collins, United States House of Representatives

